

## Environmental Protection Agency

## § 80.532

(d)(4) of this section. If the Administrator finds that such credits did not in fact meet the requirements of paragraphs (b)(1) and (c)(1) of this section, as applicable, or if the Administrator determines that there is insufficient information to determine the validity of such credits, the Administrator may deny the credits submitted in whole or in part.

(e) \* \* \*

(1) Notwithstanding the provisions of paragraph (a) of this section, a small refiner that is approved by the EPA as a small refiner under § 80.551(g) may generate credits under § 80.552(b). Such a small refiner may generate one credit for each gallon of motor vehicle diesel fuel produced that is designated under § 80.598 as motor vehicle diesel fuel subject to the 15 ppm sulfur standard under § 80.520(a)(1).

(2) \* \* \*

(i) Credits may be generated under this paragraph (e) and § 80.552(b) only during the compliance periods beginning June 1, 2006 and ending on May 31, 2010, however diesel fuel produced after December 31, 2009 shall not generate credits. Credits shall be designated separately by refinery, separately by CTA of generation, and separately by annual compliance period. The annual compliance period for 2006 shall be June 1, 2006 through June 30, 2007. The annual compliance period for 2010 shall be July 1, 2009 through May 31, 2010.

\* \* \* \* \*

### § 80.532 How are credits used and transferred?

(a) *Credit use.* Credits generated under § 80.531 may be used to meet the volume limit of § 80.530(a)(3) provided that:

(1) The credits were generated and reported according to the requirements of this subpart; and

(2) The requirements of paragraphs (b), (c), (d), and (e) of this section are met.

(b) Credits generated under § 80.531 may be used by a refinery or by an importer to comply with section 80.530 by applying one credit for every gallon of motor vehicle diesel fuel needed to meet compliance with the volume limit of § 80.530(a)(3).

(c) Credits generated may be banked for use or transfer in a later compliance period or may be transferred to another refinery or importer for use as provided in paragraph (d) of this section.

(d) *Credit transfers.* (1) Credits obtained from another refinery or from another importer, including early credits and small refiner credits as described in § 80.531 (b), (c) (d), and (e), may be used to satisfy the volume limit of § 80.530(a)(3) if all the following conditions are met:

(i) The credits were generated in the same CTA as the CTA in which credits are used to achieve compliance;

(ii) The credits are used in compliance with the time period limitations for credit use in this subpart;

(iii) Any credit transfer takes place no later than the last day of February following the compliance period when the credits are used;

(iv) No credit may be transferred more than twice, as follows: The first transfer by the refiner or importer who generated the credit may only be made to a refiner or importer who intends to use the credit; if the transferee cannot use the credit, it may make a second and final transfer only to a refiner or importer who intends to use the credit. In no case may a credit be transferred more than twice before being used or terminated;

(v) The credit transferor must apply any credits necessary to meet the transferor's annual compliance requirements before transferring credits to any other refinery or importer;

(vi) No credits may be transferred that would result in the transferor having a negative credit balance; and

(vii) Each transferor must supply to the transferee records indicating the year the credits were generated, the identity of the refiner (and refinery) or importer who generated the credits, the CTA of credit generation, and the identity of the transferring party, if it is not the same party who generated the credits.

(2) In the case of credits that have been calculated or created improperly, or are otherwise determined to be invalid, the following provisions apply:

(i) Invalid credits cannot be used to achieve compliance with the transferee's volume requirements regardless of the transferee's good faith belief that the credits were valid.

(ii) The refiner or importer who used the credits, and any transferor of the credits, must adjust their credit

records, reports and compliance calculations as necessary to reflect the proper credits.

(iii) Any properly created credits existing in the transferor's credit balance after correcting the credit balance, and after the transferor applies credits as needed to meet the compliance requirements at the end of the compliance period, must first be applied to correct the invalid transfers before the transferor trades or banks the credits.

(e) *Limitations on credit use.* (1) Credits may not be used to achieve compliance with any requirements of this subpart other than the volume limit of § 80.530(a)(3), unless specifically approved by the Administrator pursuant to a hardship relief petition under § 80.560 or § 80.561.

(2) A refiner or importer possessing credits must use all credits in its possession prior to applying the credit deficit provisions of § 80.530(a)(6).

(3) No credits may be used to meet compliance with this subpart subsequent to the compliance period ending May 31, 2010.

EFFECTIVE DATE NOTE: At 69 FR 39173, June 29, 2004, § 80.532 was revised, effective Aug. 30, 2004. For the convenience of the user, the revised text is set forth as follows:

**§ 80.532 How are motor vehicle diesel fuel credits used and transferred?**

(a) *Credit use stipulations.* Motor vehicle diesel fuel credits generated under § 80.531 may be used to meet the volume limit of § 80.530(a)(3) provided that:

(1) The motor vehicle diesel fuel credits were generated and reported according to the requirements of this subpart; and

(2) The conditions of this section are met.

(b) *Use of credits generated under § 80.531.* Motor vehicle diesel fuel credits generated under § 80.531 may be used by a refiner or by an importer to comply with § 80.530 by applying one credit for every gallon of motor vehicle diesel fuel needed to meet compliance with the volume limit of § 80.530(a)(3).

(c) *Credit banking.* Motor vehicle diesel fuel credits generated may be banked for use or transfer in a later compliance period or may be transferred to another refiner or importer for use as provided in paragraph (d) of this section.

(d) *Credit transfers.* (1) Motor vehicle diesel fuel credits obtained from another refiner or from another importer, including early motor vehicle diesel fuel credits and small refiner motor vehicle diesel fuel credits as described in § 80.531(b) through (e), may be used to satisfy the volume limit of

§ 80.530(a)(3) if all the following conditions are met:

(i) The motor vehicle diesel fuel credits were generated in the same CTA as the CTA in which motor vehicle diesel fuel credits are used to achieve compliance;

(ii) The motor vehicle diesel fuel credits are used in compliance with the time period limitations for credit use in this subpart;

(iii) Any credit transfer takes place no later than the August 31 following the compliance period when the motor vehicle diesel fuel credits are used;

(iv) No credit may be transferred more than twice, as follows: The first transfer by the refiner or importer who generated the credit may only be made to a refiner or importer who intends to use the credit; if the transferee cannot use the credit, it may make a second and final transfer only to a refiner or importer who intends to use the credit. In no case may a credit be transferred more than twice before being used or terminated;

(v) The credit transferor must apply any motor vehicle diesel fuel credits necessary to meet the transferor's annual compliance requirements before transferring motor vehicle diesel fuel credits to any other refinery or importer;

(vi) No motor vehicle diesel fuel credits may be transferred that would result in the transferor having a negative credit balance; and

(vii) Each transferor must supply to the transferee records indicating the year the motor vehicle diesel fuel credits were generated, the identity of the refiner (and refinery) or importer who generated the motor vehicle diesel fuel credits, the CTA of credit generation, and the identity of the transferring entity, if it is not the same entity who generated the motor vehicle diesel fuel credits.

(2) In the case of motor vehicle diesel fuel credits that have been calculated or created improperly, or are otherwise determined to be invalid, the following provisions apply:

(i) Invalid motor vehicle diesel fuel credits cannot be used to achieve compliance with the transferee's volume requirements regardless of the transferee's good faith belief that the motor vehicle diesel fuel credits were valid.

(ii) The refiner or importer who used the motor vehicle diesel fuel credits, and any transferor of the motor vehicle diesel fuel credits, must adjust their credit records, reports and compliance calculations as necessary to reflect the proper motor vehicle diesel fuel credits.

(iii) Any properly created motor vehicle diesel fuel credits existing in the transferor's credit balance after correcting the credit balance, and after the transferor applies motor vehicle diesel fuel credits as needed to meet the compliance requirements at the

end of the compliance period, must first be applied to correct the invalid transfers before the transferor trades or banks the motor vehicle diesel fuel credits.

(e) *Limitations on credit use.* (1) Motor vehicle diesel fuel credits may not be used to achieve compliance with any requirements of this subpart other than the volume limit of § 80.530(a)(3), unless specifically approved by the Administrator pursuant to a hardship relief petition under § 80.560 or 80.561.

(2) A refiner or importer possessing motor vehicle diesel fuel credits must use all motor vehicle diesel fuel credits in its possession prior to applying the credit deficit provisions of § 80.530(a)(6).

(3) No motor vehicle diesel fuel credits may be used to meet compliance with this subpart subsequent to the compliance period ending May 31, 2010.

**§ 80.533 How does a refiner or importer apply for a motor vehicle or non-highway baseline?**

(a) A refiner or importer wishing to generate credits under § 80.535 or use the small refiner provisions under § 80.554 must submit an application to EPA that includes the information required under paragraph (c) of this section by the dates specified in paragraph (f) of this section. A refiner must apply for a motor vehicle baseline for each refinery in order to generate credits under § 80.535 and apply for a non-highway baseline for each refinery to use the provisions of § 80.554 (a), (b), or (d).

(b) The baseline must be sent to the following address: U.S. EPA—Attn: Nonroad Rule Diesel Fuel Baseline, Transportation and Regional Programs Division (6406J), 1200 Pennsylvania Avenue, NW., Washington, DC 20460 (regular mail) or U.S. EPA, Attn: Nonroad Rule Diesel Fuel Baseline, Transportation and Regional Programs Division (6406J), 1310 L Street, NW., 6th floor, Washington, DC 20005 (express mail).

(c) A baseline application must be submitted for each refinery or import facility and include the following information:

(1) A listing of the names and addresses of all refineries or import facilities owned by the company for which the refiner or importer is applying for a motor vehicle or non-highway baseline.

(2)(i) For purposes of a motor vehicle baseline volume for use in determining early credits per § 80.535(a) and (b) and for purposes of a non-highway baseline

volume used in determining compliance with the provisions of § 80.554(a) or (d), the baseline volume produced during the three calendar years beginning January 1, 2003, 2004, and 2005, as calculated under paragraph (e)(1) of this section.

(ii) For purposes of a motor vehicle baseline volume for use in determining early credits per § 80.535(c) and for purposes of a non-highway baseline volume used in determining compliance with the provisions of § 80.554(b), the baseline volumes produced during the three calendar years beginning January 1, 2006, 2007, and 2008, as calculated under paragraph (e)(2) of this section.

(3) A letter signed by the president, chief operating officer of the company, or his/her delegate, stating that the information contained in the motor vehicle or non-highway baseline application is true to the best of his/her knowledge.

(4) Name, address, phone number, facsimile number and e-mail address of a corporate contact person.

(5) For each batch of diesel fuel produced or imported during each calendar year:

(i) The date that production was completed or importation occurred for the batch and the batch designation or classification.

(ii) The batch volume.

(6) Other appropriate information as requested by EPA.

(d) *Calculation of the Motor vehicle Baseline,  $B_{MV}$ .* (1) Under paragraph (c)(2)(i) of this section,  $B_{MV}$  equals the average annual volume of motor vehicle diesel fuel produced or imported from January 1, 2003 through December 31, 2005.

(2) Under paragraph (c)(2)(ii) of this section,  $B_{MV}$  equals the average annual volume of motor vehicle diesel fuel produced during the period from January 1, 2006 through December 31, 2008.

(3) For purposes of this paragraph, fuel produced for export, jet fuel (kerosene), and fuel specifically produced to meet military specifications (such as JP-4, JP-8, and F-76), shall not be included in baseline calculations.

(e) *Calculation of the Non-highway Baseline,  $B_{NRLM}$ .* (1) Under paragraph (c)(2)(i) of this section,  $B_{NRLM}$  equals the average annual volume of all #2D